

DATED

2010

(1) THE UNIVERSITY OF SHEFFIELD

- and -

(2) [RECIPIENT]

**MATERIALS TRANSFER
AGREEMENT**

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BETWEEN

- (1) **THE UNIVERSITY OF SHEFFIELD**, incorporated by Royal Charter (company number RC000667) whose address is Western Bank, Sheffield S10 2TN ("**SHEFFIELD**"); and
- (2) [**RECIPIENT**] a company registered in England and Wales under number whose registered office is at ("**RECIPIENT**").

(each a "party" and together the "parties" to this Agreement)

BACKGROUND

SHEFFIELD agrees to supply RECIPIENT with, and RECIPIENT wishes to be supplied with, the Materials for use in the Programme of Works in accordance with the terms and conditions set out in this Agreement, all as defined below.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (unless the context otherwise requires), the following words and phrases shall have the following meanings:

"Agreement" means this agreement and any document referred to, completed or to be completed in accordance with its provisions.

"Commencement Date" means the commencement date described in schedule 1 to this Agreement.

"Force Majeure Event" means any circumstance beyond the reasonable control of the parties including, but not limited to acts of God, fire, explosion, adverse weather conditions, flood, earthquake, terrorism, riot, civil commotion, war, hostilities, strikes, work stoppages, slow-downs or other industrial disputes, accidents, riots or civil disturbances, acts of government, lack of power and delays by suppliers or materials shortages.

"Intellectual Property or Intellectual Property Rights" includes patents, inventions, know-how, trade secrets and other confidential information, registered

designs, copyrights, database rights, design rights, rights affording equivalent protection to copyright, database rights and design rights, semiconductor topography rights, trade marks, service marks, logos, domain names, business names, trade names, moral rights, and all registrations or applications to register any of the aforesaid items, rights in the nature of any of the aforesaid items in any country or jurisdiction, rights in the nature of unfair competition rights and rights to sue for passing-off.

"Materials" means the materials described in schedule 1 to this Agreement.

"Principal Investigator" means the principal investigator named in schedule 1 hereto or as agreed between the parties.

"Programme of Works" means the programme of works described in schedule 1 to this Agreement.

"Results" means any results, data, information, materials, products or processes arising from RECIPIENT'S use of the Materials.

"Term" means the period starting on the Commencement Date and finishing on the Termination Date.

"Termination Date" means the termination date as set out in schedule 1 hereto or any other date of termination of this Agreement in accordance with its terms.

"Working Day" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory holiday.

1.2 In this Agreement (unless the context otherwise requires):

1.2.1 construction of this Agreement shall ignore the headings, contents list and frontsheet (all of which are for reference only); and

1.2.2 any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision.

2. **TRANSFER OF MATERIALS**

In consideration of the parties each entering into this Agreement, SHEFFIELD shall supply and RECIPIENT shall receive Materials for use in the Programme of Works in accordance with the terms of this Agreement.

3. TERM

This Agreement shall come into force on the Commencement Date and shall continue in force until the Termination Date.

4. PAYMENT

4.1 The Materials will be supplied by SHEFFIELD to RECIPIENT for the sum and in accordance with the payment terms as set out in schedule 1 to this Agreement.

4.2 The RECIPIENT is not entitled to withhold payment of any amount due to SHEFFIELD by way of any set-off or counterclaim.

5. TERMS AND CONDITIONS RELATING TO THE USE OF THE MATERIALS

5.1 RECIPIENT shall follow the Programme of Works and the Materials, their products and/or derivatives shall be used solely by RECIPIENT for the Programme of Works under the direction of the Principal Investigator and shall not be distributed to any third party, or used for any other commercial purpose or commercially sponsored research other than that set out in the Programme of Works, without the express written consent of SHEFFIELD.

5.2 RECIPIENT and the Principal Investigator shall keep the Materials secure at RECIPIENT's premises and ensure that no-one other than RECIPIENT, the Principal Investigator and authorised co-workers have access to them.

5.3 The supply of Materials does not constitute any express or implied licence in the Materials, their products and/or derivatives except as expressly set out in this Agreement.

5.4 The Materials shall not be used in humans under any circumstances.

5.5 RECIPIENT will, and will procure that the Principal Investigator will, use the Materials in accordance with good laboratory practice and the highest standards of skill and care and shall ensure compliance with any applicable laws and regulations governing the transportation, keeping or use of the Materials.

5.6 The Materials (and any copies thereof made by or in the possession of or under the control of RECIPIENT pursuant to this Agreement) shall be and will continue to

remain the property of SHEFFIELD and shall be immediately returned (or if SHEFFIELD so requires, destroyed):

5.6.1 on termination of this Agreement; or

5.6.2 in the event that RECIPIENT is in breach of this Agreement; or

5.6.3 at any other time on the request of SHEFFIELD.

5.7 Any unused Materials shall be made available to SHEFFIELD upon request.

6. LIABILITY

6.1 RECIPIENT acknowledges and accepts that the Materials are experimental in nature and may have hazardous properties. RECIPIENT assumes sole responsibility for any damage, claims or other liability arising from RECIPIENT's use, storage or disposal of the Materials. Except as set out in this clause 6, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the supply or non supply of, or delay in supplying, the Materials are expressly excluded by SHEFFIELD to the extent permitted by law.

6.2 Subject to the provisions in clause 6.3 below, SHEFFIELD is not liable to RECIPIENT in contract, tort (including negligence or breach of statutory duty) or otherwise for any losses or damages, whether direct, indirect, special or consequential arising out of, or in connection with, the supply, non supply or delay in supplying the Materials (howsoever caused even if SHEFFIELD was advised of the possibility of them in advance) or otherwise in connection with this Agreement.

6.3 Nothing in this Agreement shall operate to exclude or restrict either party's liability for:

6.3.1 death or personal injury resulting from negligence;

6.3.2 breach of the obligations arising from section 12 of the Sale of Goods Act 1979;

6.3.3 fraud or deceit; or

6.3.4 any other matter which may not be excluded or restricted by law.

6.4 RECIPIENT undertakes to make no claim in connection with this Agreement or its subject matter against any individual employee, student, agent or appointee of SHEFFIELD (apart from claims based on fraud or wilful misconduct).

7. INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights relating to the Materials belong exclusively to or are licensed to SHEFFIELD, and all Intellectual Property Rights relating to any Results shall belong exclusively to SHEFFIELD.

7.2 SHEFFIELD hereby grants to RECIPIENT a royalty-free, non-exclusive licence to use the Results for teaching and research purposes only. For the avoidance of doubt, nothing in this Agreement shall operate to transfer any Intellectual Property Rights to RECIPIENT nor grant any express or implied licence to use any Intellectual Property Rights except as expressly set out in this Agreement.

7.3 In the event that RECIPIENT makes or observes a new discovery, improvement or invention ("**Invention**") relating to the Materials or the Results then RECIPIENT will bring this to the attention of SHEFFIELD. RECIPIENT shall not make or seek to make actual commercial gain from such an Invention nor make any patent application or secure any other proprietary rights to legally protect any such Invention except with the prior written consent of SHEFFIELD.

7.4 RECIPIENT shall at all times keep SHEFFIELD informed of all Results obtained from the use of the Materials as soon as they are available and provide SHEFFIELD with copies of all reports relating to the Results.

7.5 RECIPIENT shall submit to SHEFFIELD any publications, papers, abstracts or other records intended for publication that describe the Results at least thirty (30) days prior to submission to any journal, conference office or other office for publication. RECIPIENT will, on SHEFFIELD's request, delay publication for a period of up to six (6) months to enable the filing of any applicable patent applications relating to the Results. SHEFFIELD shall respond to all submissions of intent to publish within thirty (30) days of receipt.

7.6 RECIPIENT shall ensure that all publications include an acknowledgement describing SHEFFIELD as the supplier of the Materials.

7.7 SHEFFIELD makes no representation and gives no warranty or undertaking in relation to the Materials. For example, but without limitation, SHEFFIELD gives no warranty that:

7.7.1 it owns all necessary property and other rights in the Materials and that their use will not infringe any Intellectual Property Rights owned by any third parties; or

7.7.2 that the Materials are of merchantable or satisfactory quality or fit for any particular purpose, have been developed with reasonable care and skill or are viable, safe or non-toxic.

8. TERMINATION

Either party may terminate this Agreement with immediate effect by written notice to the other if the other party is in material breach of an obligation under this Agreement and if the breach is capable of remedy has failed to remedy the breach within twenty eight (28) days of receiving a notice specifying the breach and requiring its remedy.

9. CONSEQUENCES OF TERMINATION

Upon termination of this Agreement all rights and obligations of the parties shall cease to have effect immediately except that termination shall not affect accrued rights and obligations of the parties under this Agreement at the date of termination or any express obligations in this Agreement of a continuing nature.

10. DISPUTE RESOLUTION

10.1 If any dispute arises between the parties under or in connection with this Agreement either party may serve notice upon the other setting out brief details of the dispute that has arisen ("**Notice of Dispute**") and the parties shall use their best endeavours to resolve the dispute by good faith negotiations.

10.2 If the dispute is not resolved within three (3) months from the date of the Notice of Dispute, then the matter shall be referred to arbitration.

10.3 Without prejudice to clause 10.1 above, any dispute arising out of or in connection with this Agreement which cannot be resolved within three (3) months from the date of the Notice of Dispute, shall be finally resolved by arbitration in accordance with

the provisions of the Arbitration Act 1996 and conducted pursuant to the rules of the Chartered Institute of Arbitrators at present in force and subject to English law.

10.4 The parties acknowledge and agree that:

10.4.1 the tribunal shall consist of a single arbitrator;

10.4.2 the arbitrator shall be appointed by the parties jointly or (failing agreement within five further Working Days) to be selected and appointed by the President for the time being of the Chartered Institute for Arbitrators ;

10.4.3 any right of application or appeal to court concerning any question of law arising in the course of the arbitration shall be excluded insofar as the law allows; and

10.4.4 the place of the arbitration shall be London and all submissions and awards shall be made in English.

11. CONFIDENTIALITY

11.1 In this clause 11, "**Confidential Information**" means all confidential information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party ("**Disclosing Party**") to the other party ("**Receiving Party**") including, but not limited to, information relating to the Disclosing Party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.

11.2 During the Term and after termination or expiry of this Agreement the Receiving Party:

11.2.1 shall not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;

11.2.2 shall not disclose Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with clauses 11.3 and 11.4;

11.2.3 shall make every effort to prevent the use or disclosure of Confidential Information.

- 11.3 During the term of this Agreement the Receiving Party may disclose Confidential Information to any of its directors, other officers, employees and sub-contractors ("**Recipient**") to the extent that disclosure is necessary for the purposes of this Agreement.
- 11.4 Before disclosure of Confidential Information to a Recipient, the Receiving Party shall ensure that such Recipient is made aware of and is under their own obligation to comply with the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.
- 11.5 Clauses 11.2 to 11.4 do not apply to Confidential Information which:
- 11.5.1 is at the Commencement Date or becomes at any time after that date publicly known other than by the Receiving Party's or Recipient's breach of this Agreement;
 - 11.5.2 can be shown by the Receiving Party to the Disclosing Party's reasonable satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party;
 - 11.5.3 is or becomes available to the Receiving Party otherwise than pursuant to this Agreement and free of any restrictions as to its use or disclosure;
 - 11.5.4 is required to be disclosed by law.

12. FREEDOM OF INFORMATION

Nothing in this Agreement shall be interpreted as contravening any of the provisions of the Freedom of Information Act 2000 to which SHEFFIELD is subject.

13. FORCE MAJEURE

- 13.1 Upon the happening of a Force Majeure Event:
- 13.1.1 neither party shall be liable to the other party for any delay in performance or failure to perform its obligations in accordance with this Agreement; and
 - 13.1.2 if the Force Majeure Event continues for more than three (3) months either party may terminate this Agreement with immediate effect by notice in writing to the other party.

13.2 For the avoidance of doubt, nothing shall excuse RECIPIENT from any payment obligations under this Agreement.

14. ASSIGNMENT AND SUB-CONTRACTING

Neither party may sub-contract the performance of any of its obligations or assign or deal in any way with all or any part of the benefit of, or its rights or obligations under, this Agreement without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed).

15. SEVERANCE

If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

16. THIRD PARTIES

A person who is not party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

17. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to create a partnership or joint venture or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other. Save where expressly stated in this Agreement, neither party shall have authority to make representations, act in the name or on behalf of or otherwise to bind the other.

18. WAIVER

No forbearance or delay by either party in enforcing its rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or any later breach.

19. VARIATION

No variation of this Agreement or any of the documents in the agreed form referred to in it shall be valid unless it is in writing signed by or on behalf of each of the parties to this Agreement.

20. ENTIRE AGREEMENT

20.1 This Agreement, together with any documents referred to in it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the parties relating to such matters.

20.2 Each of the parties acknowledges and agrees that in entering into this Agreement, and any documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to either party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

20.3 Nothing in this clause 20 shall operate to exclude any liability for fraud.

21. GOVERNING LAW AND JURISDICTION

21.1 This Agreement and any matter arising from or in connection with it shall be governed by and construed in accordance with English law.

21.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the English courts over any claim or matter arising from or in connection with this Agreement.

IN WITNESS whereof the parties have executed this Agreement the day and year first above written.

Signed by ◆ for and on behalf of <i>THE UNIVERSITY OF SHEFFIELD:</i>)))

Signed by ◆ for and on behalf of <i>[RECIPIENT]:</i>)))

SCHEDULE 1

1. Materials

[Insert details of Materials to be supplied]

In this Agreement "**Materials**" shall include any and all Materials, materials, documents and information that SHEFFIELD may provide to RECIPIENT under or in connection with this Agreement.

2. Programme of Works

[Insert details of the Programme of Works in which the Materials are permitted to be used including full details of all research to be carried out by RECIPIENT using the Materials]

3. Principal Investigator

[Insert name and contact details of the Principal Investigator at RECIPIENT]

4. Payment

The Materials will be supplied by SHEFFIELD to RECIPIENT free of charge.

5. Commencement Date

[Insert details of the commencement date]

6. Termination Date

[Insert details of the termination date; or "Indefinite"]